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OFFICE OF PETITIONS

In re Application	:	
Ryuichi Ugajin	:	
Application No. 10/089,857	:	DECISION ON APPLICATION
Filed: April 2, 2002	:	FOR PATENT TERM ADJUSTMENT
Atty Docket No. 9794353-0020	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT" filed June 28, 2006. Applicant requests that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from forty-five (45) days to two hundred seventy-nine (279) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **two hundred seventy-nine (279) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On April 24, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is forty-five (45) days. On June 28, 2006, Applicants timely[1] submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is two hundred seventy-nine (279) days.

Applicants assert entitlement to a patent term adjustment of two hundred seventy-nine (279) days on the basis that the PTO improperly assessed Applicants a delay of one hundred seventy-six (176) days for responding to a September 20, 2004 final Office action by filing an RCE on June 14, 2005. Applicants assert that they filed the RCE on January 19, 2005.

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of forty-five (45) based on an adjustment for PTO delay of two hundred twenty-four (224) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1) and thirty-eight (38) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. 1.703(a)(2), reduced by Applicants' delays of thirty-nine (39), one hundred seventy-six (176), and two (2) days pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. § 1.704(b). The adjustment of one hundred seventy-six (176) days is at issue.

The adjustment of one hundred seventy-six (176) days has been found to be incorrect. Applicants have submitted a copy of a postcard receipt for the instant application, itemizing an RCE, and bearing a USPTO date stamp of January 19, 2005. A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.[2] Accordingly, it is concluded that Applicant should only have been assessed delay of thirty (30) days for filing the RCE on January 19, 2005, not one hundred seventy-nine (179) days.

[1] Applicants filed the application for patent term adjustment prior to the filing of the issue fee.

[2] MPEP 503.

Furthermore, as Applicant filed the RCE on January 19, 2005, the Office should have been assessed additional delay in not mailing a response until August 15, 2005. Office delay should have been assessed as eighty-eight (88) days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **two hundred seventy-nine (279) days** (350 (38+88+224) days of PTO delay and 71 (2+30+39) days of applicant delay).

The Office acknowledges submission of the $200.00 fee set forth in 37 C.F.R. § 1.18(e).

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Kery A Fries

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen

Day : Monday
Date: 10/2/2006

PALM INTRANET

Time: 12:03:54

PTA Calculations for Application: 10/089857			
Application Filing Date:	04/02/2002	PTO Delay (PTO):	262
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	217
Post-Issue Petitions:	0	Total PTA (days):	279
PTO Delay Adjustment:	234		

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4	06/27/2002	APPLICATION DISPATCHED FROM OIPE			
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EXPLANATION OF PTA CALCULATION

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